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RBOC FINES AND PENALTIES - SBC, Pacific Bell, Ameritech

Assessed	Carrier	How Much	Where	Why	Source	Date
Sep-96	Ameritech	\$73,000	OH	12 months of fines for failing to restore service after weather-related problems	The Plain Dealer Cleveland, OH	9/20/1996
Feb-97	Ameritech	\$840,000	OH	"Inadvertent failure to accurately report" its service results under the state's minimum phone standards from 6/95-6/96: \$300,000 fine + forgo up to \$540,000 in earnings as a penalty	The Plain Dealer Cleveland, OH; Columbus Dispatch	2/12/1997
1998	Ameritech	\$615,000	WI	Lack of good service to approx. 43,000 customers in 1995	Wisconsin State Journal	4/17/1998
Aug-98	Pacific Bell	\$1,500,000	CA	Allegedly misused confidential billing information (fine is response to 1996 lawsuit filed by MCI, AT&T and Sprint)	San Diego Business Journal	9/14/1998
Sep-98	Pacific Bell	\$309,000	CA	Provided substandard ISDN service to customers and submitted false reports of customer satisfaction to state regulators.	San Jose Mercury News	9/18/1998
1999	Pacific Bell	\$44,000,000	CA	Company had engaged in overly aggressive and deceptive marketing practices (\$24M to customer education fund \$20M in fines)	Los Angeles Times	12/23/1999
Sep-99	SBC	\$845,000	TX	Anti-competitive treatment of Covad & Rhythms (withholding documents during arbitration)	San Antonio Express-News; Network World	9/11/1999
Jan-00	SBC	\$472,600	TX	CLEC problems in TX	Associated Press	4/19/2000
Feb-00	SBC	\$407,000	TX	CLEC problems in TX	Associated Press	4/19/2000
May-00	SBC	\$27,000,000	CA	Failure to deliver equipment & space to Covad in a timely manner.	San Francisco Business Times	2/2/2001
Jul-00	SBC	\$708,950	IL	Failure to meet wholesale service standards	ePrairie.com	8/21/2001
Jul-00	SBC	\$8,750,000	OH	Fines / credits levied for poor service & violation of PUCO orders	Dayton Daily News	9/22/2001
Jul-00	SBC	\$155,500	OH	Failure to meet wholesale service standards	Public Utilities Commission of Ohio	
Jul-00	SBC	\$800,000	OH	Company violated state telephone standards 122,531 times between 8/98 and 7/99.	Akron Beacon Journal	1/18/2001

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Aug-00	SBC	\$932,400	IL	Failure to meet wholesale service standards	ePrairie.com	8/21/2001
Aug-00	SBC	\$295,000	OH	Failure to meet wholesale service standards	Public Utilities Commission of Ohio	
Sep-00	SBC	\$1,410,370	IL	Failure to meet wholesale service standards	ePrairie.com	8/21/2001
Sep-00	SBC	\$813,525	OH	Failure to meet wholesale service standards	Public Utilities Commission of Ohio	
Oct-00	SBC	\$13,750,000	WI	Refund (credits) for poor service quality	Capital Times (Madison, WI)	2/15/2001
Oct-00	SBC	\$1,757,890	IL	Failure to meet wholesale service standards	ePrairie.com	8/21/2001
Oct-00	SBC	\$743,126	OH	Failure to meet wholesale service standards	Public Utilities Commission of Ohio	
Oct-00	SBC	\$1,750,000	WI	Rate reduction penalty for failure to meet service quality standards	Capital Times (Madison, WI); WI PSC Docket 6720-TI-ITF	2/15/2001
Nov-00	SBC	\$1,416,223	IL	Failure to meet wholesale service standards	ePrairie.com	8/21/2001
Nov-00	SBC	\$722,800	OH	Failure to meet wholesale service standards	Public Utilities Commission of Ohio	
Dec-00	SBC	\$19,000,000	MI	Settlement reached in Dec. for service quality problems (\$13 M) plus voluntary credits (\$5.4 M)	Crain's Detroit Business	4/9/2001
Dec-00	SBC	\$1,498,707	IL	Failure to meet wholesale service standards	ePrairie.com	8/21/2001
Dec-00	SBC	\$760,975	OH	Failure to meet wholesale service standards	Public Utilities Commission of Ohio	
Dec-00	SBC	\$6,151,100	US	Failing to meet SBC/Ameritech merger conditions.	Communications Daily; FCC Docket 98-141	4/9/2001
Jan-01	SBC	\$30,000,000	IL	Failure to restore phone service w/ 24 hrs to at least 95% of customers. Standard part of SBC/Ameritech merger agreement.	South Bend Tribune	1/24/2001
Jan-01	SBC	\$2,891,525	IL	Failure to meet wholesale service standards	ePrairie.com	8/21/2001
Jan-01	SBC	\$1,224,657	OH	Failure to meet wholesale service standards	Public Utilities Commission of Ohio	
Jan-01	SBC	\$6,400,000	US	Failure to meet merger commitments.	Communications Daily	4/9/2001
Jan-01	SBC	\$675,000	IN	Pending damages to a computer consultant for faulty phone service. Ameritech has already been found guilty in the case.	The Indianapolis Star	1/23/2001
Feb-01	SBC	\$6,085,950	US	Failure to meet merger commitments	Communications Daily	4/9/2001
Feb-01	SBC	\$500	WI	Failure to meet wholesale service standards	Wisconsin Public Service Commission	
Feb-01	SBC	\$3,151,154	IL	Failure to meet wholesale service standards	ePrairie.com	8/21/2001
Feb-01	SBC	\$33,512	MI	Failure to meet wholesale service standards	Michigan Public Service Commission	
Feb-01	SBC	\$828,387	OH	Failure to meet wholesale service standards	Public Utilities Commission of Ohio	
Mar-01	SBC	\$3,077,406	IL	Failure to meet wholesale service standards	ePrairie.com	8/21/2001

Mar-01	SBC	\$1,079,363	OH	Failure to meet wholesale service standards	Public Utilities Commission of Ohio	
Mar-01	SBC	\$4,585,580	US	Failure to meet merger commitments.	Communications Daily, FCC Docket 98-141	4/9/2001
Mar-01	SBC	\$88,000	US	Failure to report performance data (detailed monthly reports reflecting its performance responding to requests for facilities and services from rivals and end-user customers)	FCC Press Release	5/29/2001
Mar-01	SBC	\$77,500	MI	Failure to meet wholesale service standards	Michigan Public Service Commission	
Apr-01	SBC	\$3,600,630	IL	Failure to meet wholesale service standards	ePrairie.com	8/21/2001
Apr-01	SBC	\$1,171,875	OH	Failure to meet wholesale service standards	Public Utilities Commission of Ohio	
Apr-01	SBC	\$79,000	MI	Failure to meet wholesale service standards	Michigan Public Service Commission	
Apr-01	SBC	\$17,500	WI	Failure to meet wholesale service standards	Wisconsin Public Service Commission	
May-01	SBC	\$3,764,719	IL	Failure to meet wholesale service standards	ePrairie.com	8/21/2001
May-01	SBC	\$1,141,739	OH	Failure to meet wholesale service standards	Public Utilities Commission of Ohio	
May-01	SBC	\$1,006	WI	Failure to meet wholesale service standards	Wisconsin Public Service Commission	
May-01	SBC	\$90,087	MI	Failure to meet wholesale service standards	Michigan Public Service Commission	
May-01	SBC	\$3,872,175	US	Failure to meet merger commitments	Reuters; FCC Docket 98-141	5/31/2001
May-01	SBC	\$94,500	US	Failure to identify COs w/o collocation space.	FCC Press Release	5/24/2001
May-01	SBC	\$120,000,000	IL	Refunds to business customer due to improperly classifying services as competitive NOTE: ICC case with no final order yet. Legislature "settled" case for \$120 million	Illinois Commerce Commission	
Jun-01	SBC	\$2,200,000	IL	Failure to meet wholesale service standards	ePrairie.com	8/21/2001
Jun-01	SBC	\$5,250	IN	Failure to meet wholesale service standards	Indiana Utility Regulatory Commission	
Jun-01	SBC	\$60,000	MI	Failure to meet wholesale service standards	Michigan Public Service Commission	
Jun-01	SBC	\$921,000	OH	Failure to meet wholesale service standards	Public Utilities Commission of Ohio	
Jul-01	SBC	\$1,488,556	IL	Failure to meet wholesale service standards	Illinois Commerce Commission	
Jul-01	SBC	\$4,750	IN	Failure to meet wholesale service standards	Indiana Utility Regulatory Commission	
Jul-01	SBC	\$37,000	MI	Failure to meet wholesale service standards	Michigan Public Service Commission	
Jul-01	SBC	\$114,893	OH	Failure to meet wholesale service standards	Public Utilities Commission of Ohio	
Jul-01	SBC	\$3,223,235	US	Failure to meet merger commitments	Reuters; FCC Docket 98-141	7/27/2001
Aug-01	SBC	\$549,550	IL	Failure to meet wholesale	Illinois Commerce	

				service standards	Commission	
Aug-01	SBC	\$3,800,000	US	Failure to meet wholesale service standards	Reuters	8/24/2001
Sep-01	SBC	\$2,540,487	US	Failure to meet wholesale service standards	Reuters; FCC Docket 98-141	9/26/2001
Sep-01	SBC	\$25,600,000	CA	Deceptive and overly aggressive marketing of phone services	San Jose Mercury News	9/21/2001
Sep-01	SBC	\$501,491	IL	Failure to meet wholesale standards	ePrairie.com	12/20/2001
Oct-01	SBC	\$2,976,873	US	Failure to meet wholesale service standards	Fort Worth Star-Telegram; FCC Docket 98-141	10/27/2001
Oct-01	SBC	\$443,000	MI	Failure to meet wholesale service standards	TRs State NewsWire	12/26/2001
Oct-01	SBC	\$3,200	IN	Failure to meet wholesale service standards	TRs State NewsWire	12/26/2001
Oct-01	SBC	\$5,000,000	OH	Bill credits for poor service / high pressure marketing tactics	Dayton Daily News	10/12/2001
Oct-01	SBC	\$2,500,000	WI	Wholesale/retail penalties; stayed by court pending determination of how penalty funds will be used - amount being held in escrow	CommDaily	12/28/2001
Oct-01	SBC	\$75,000	OH	Failure to meet wholesale service standards	TRs State NewsWire	12/26/2001
Oct-01	SBC	\$480,613	IL	Failure to meet wholesale service standards	Chicago Tribune	12/21/2001
Oct-01	SBC	\$2,520,000	US	Submission of inaccurate Sec. 271 information in its Kansas and Oklahoma application (pending)	Reuters	10/16/2001
Nov-01	SBC	\$3,510,421	US	Failure to meet requirements regarding the treatment of rivals using the company's network.	Bloomberg	11/28/2001
Nov-01	SBC	\$100,000	US	Failure to provide sworn written response to the FCC Enforcement Bureau in its investigation of possible anti-competitive behavior (pending)	CommDaily	11/5/2001
Nov-01	SBC	\$501,491	IL	Failure to meet wholesale service requirements for the July-September period.	ePrairie.com	12/20/2001
Nov-01	SBC	\$374,556	IL	Failure to meet wholesale service standards	SBC.com	
Nov-01	SBC	\$468	IN	Failure to meet wholesale service standards	SBC.com	
Nov-01	SBC	\$339,279	MI	Failure to meet wholesale service standards	SBC.com	
Nov-01	SBC	\$208,401	OH	Failure to meet wholesale service standards	SBC.com	
Nov-01	SBC	\$15,552	WI	Failure to meet wholesale service standards	SBC.com	
Dec-01	SBC	\$480,613	IL	Failure to meet wholesale performance requirements	ePrairie.com	12/20/2001
Dec-01	SBC	\$1,946,024	US	Failure to meet wholesale performance measures	Reuters	12/26/2001
Dec-01	SBC	\$25,335	WI	Failure to meet wholesale	SBC.com	

				performance requirements		
Dec-01	SBC	\$236,023	OH	Failure to meet wholesale performance requirements	SBC.com	
Dec-01	SBC	\$527,018	MI	Failure to meet wholesale performance requirements	SBC.com	
Dec-01	SBC	\$31,560	IN	Failure to meet wholesale performance requirements	SBC.com	
Dec-01	SBC	\$286,660	IL	Failure to meet wholesale performance requirements	ePrairie.com	12/20/2001
Jan-02	SBC	\$6,000,000	US	Failure to provide access to shared transport facilities in Ameritech territory (pending FCC decision)	FCC Press Release	1/18/2002
Jan-02	SBC	\$15,300	WI	Failure to meet wholesale service standards	TRInsight	3/26/2002
Jan-02	SBC	\$15,700	IN	Failure to meet wholesale service standards	TRInsight	3/26/2002
Jan-02	SBC	\$51,000	OH	Failure to meet wholesale service standards	TRInsight	3/26/2002
Jan-02	SBC	\$323,800	MI	Failure to meet wholesale service standards	TRInsight	3/26/2002
Jan-02	SBC	\$470,700	IL	Failure to meet wholesale service standards	TRInsight	3/26/2002
Jan-02	SBC	\$224,000,000	IL	Credits of \$50/residential phone line for "net merger savings" from SBC/Ameritech merger	Chicago Tribune	1/18/2002
Jan-02	SBC	\$3,750,000	MI	Court of appeals upheld 1999 fine against SBC for failing to fulfill WorldCom's orders for unbundled local transport	TR Daily, State of Michigan Court of Appeals Decision No. 226242 and No. 229912	1/24/2002
Jan-02	SBC	\$2,900,000	US	Failure to meet wholesale performance measures	Communications Daily	1/31/2002
Feb-02	SBC	\$292,000	IL	"Remedy payments" to state and CLECs for failing to meet merger commitments (shared transport)	TRInsight	2/20/2002
Feb-02	SBC	\$350,000,000	CA	State PUC released results of an audit for the time period of 1997-1999 finding that Pac Bell should refund customers \$350M (pending)	Associated Press	2/21/2002
Feb-02	SBC	\$84,000	US	Failure to identify COs w/o collocation space. (Reduced from original fine of \$94,500 imposed 5/01)	FCC Press Release	2/25/2002
Feb-02	SBC	\$30,000	MI	Customer Service Violations	Detroit Free Press	2/26/2002
Feb-02	SBC	\$3,400,000	US	Failure to meet wholesale service standards	St. Louis Post-Dispatch	2/27/2002
Feb-02	SBC	\$15,127	WI	Failure to meet wholesale service standards	SBC.com	4/23/2002
Feb-02	SBC	\$32,606	OH	Failure to meet wholesale service standards	SBC.com	4/23/2002
Feb-02	SBC	\$174,055	MI	Failure to meet wholesale service standards	SBC.com	4/23/2002
Feb-02	SBC	\$30,120	IN	Failure to meet wholesale service standards	SBC.com	4/23/2002
Feb-02	SBC	\$264,356	IL	Failure to meet wholesale service standards	ePrairie.com	4/22/2002

Mar-02	SBC	\$1,700,000	US	Failure to meet wholesale service standards	Chicago Sun-Times	4/4/2002
Apr-02	SBC	\$100,000	US	Violated an Enforcement Bureau order directing the company to provide sworn verification of the truth and accuracy of its answers to a Bureau letter of inquiry.	FCC Press Release	4/15/2002
Apr-02	SBC	\$109,033	IL	Failure to meet wholesale service standards	ePrairie.com	6/24/2002
Apr-02	SBC	\$1,950,000	US	Failure to meet wholesale service standards that were part of SBC/Ameritech merger requirements	ePrairie.com	5/6/2002
May-02	SBC	\$1,010,000	US	Failure to meet wholesale services standards as part of SBC/Ameritech merger requirements	Bloomberg	5/28/2002
May-02	SBC	\$3,600,000	US	Filed inaccurate information in 271 applications for four states	Wall Street Journal	5/29/2002
June-02	SBC	\$1,160,000	US	Failure to meet wholesale service standards	Bloomberg	6/25/2002
June-02	SBC	\$8,500,000	OH	SBC did not provide acceptable levels of customer service.	PUCO	6/25/2002
June-02	SBC	\$965,355	IL	Failure to meet wholesale service standards	Comm Daily	8/26/2002
June-02	SBC	\$75,036	IN	Failure to meet wholesale service standards	Comm Daily	8/26/2002
June-02	SBC	\$699,239	MI	Failure to meet wholesale service standards	Comm Daily	8/26/2002
June-02	SBC	\$3,700,000	MI	Failure to meet wholesale service standards	Comm Daily	8/26/2002
June-02	SBC	\$113,640	OH	Failure to meet wholesale service standards	Comm Daily	8/26/2002
June-02	SBC	\$11,300,000	OH	Failure to meet wholesale service standards	Comm Daily	8/26/2002
June-02	SBC	\$4,200,000	WI	Failure to meet wholesale service standards	Comm Daily	8/26/2002
July-02	SBC	\$27,000,000	CA	Pending fine for billing thousands of customers for high-speed internet service they never requested	Wall Street Journal	7/08/2002
July-02	SBC	\$2,931,325	WI	Failure to meet wholesale service standards for 5/02 (stayed under PSC plan)	ePrairie.com	7/23/2002
July-02	SBC	\$234,357	OH	Failure to meet wholesale service standards for 5/02	ePrairie.com	7/23/2002
July-02	SBC	\$492,066	MI	Failure to meet wholesale service standards for 5/02	ePrairie.com	7/23/2002
July-02	SBC	\$5,500	IN	Failure to meet wholesale service standards for 5/02	ePrairie.com	7/23/2002
July-02	SBC	\$316,097	IL	Failure to meet wholesale service standards for 5/02	ePrairie.com	7/23/2002
Total		\$1,057,148,642				

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VIA E-MAIL AND US MAIL

Lisa Griffin
Lia B. Royle
Market Disputes Resolution Division
Enforcement Bureau
Federal Communications Commission
Washington, DC 20554

Re: File Nos. EB-01-MD-017 and EB-01-IH-0030

Dear Ms. Griffin and Ms. Royle:

CoreComm Communications, Inc. and Z-Tel Communications, Inc. ("Complainants"), by counsel and in accordance with Ms. Griffin's oral ruling of July 1, 2002, hereby file their response to SBC Communications, Inc.'s ("SBC's") June 20, 2002 letter ("June 20 Letter") and June 26, 2002 letter ("June 26 Letter") in the above reference proceedings.

I. INTRODUCTION AND SUMMARY

In a meeting between SBC and Chairman Powell on July 9, 2002, SBC argued that it should not be required to comply with a condition of the approval of its license transfers in the Arnetech/SBC merger because SBC had no "meeting of the minds" with Commission Staff. In the first instance, SBC's argument is irrelevant. A Commission order approving the transfer of control of licenses is not a contract; it is a binding order of the Commission. In this case in particular, SBC can hardly complain that it had lack of notice of how to conform its conduct to the rule, as it drafted and proposed to the Commission the provision that it now claims is ambiguous. In the event that the Commission were to recognize a lack of contract formation defense, however, SBC's assertion is even more curious, as possible remedies for failing to form a contract include declaring the contract -- in this case the FCC's order approving the transfer of control of licenses from Arnetech to SBC -- to be void and subject to rescission. Followed to

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this SBC assertion to its logical conclusion, as was discussed in the meeting with Chairman Powell, the SBC/Ameritech merger would have to be unwound.

SBC, Ameritech, and the Commission clearly contemplated divestiture as a remedy for failure to comply with the voluntary merger conditions that SBC and Ameritech committed to in order to obtain Commission approval of the merger.¹ Even with that possible remedy available to the Commission, SBC's compliance with the merger conditions has been, to say the least, dismal. Indeed, in addition to the instant NAL (which includes the highest proposed forfeiture ever), ongoing merger-related investigations, and various non-merger forfeitures,² the Enforcement Bureau has been busy at work dealing with SBC's failure to comply with its merger commitments to this Commission:

- File No. EB-00-1H-0326a (Feb. 25, 2002) (failure to comply with section 51.312(h) of the FCC's rules, which requires timely notice of premises where collocation space has been exhausted, as identified by the collocation audit required by the SBC-Ameritech Merger Conditions) and
- File No. EB-00-IH-0432 (May 29, 2001) (failure to accurately report wholesale performance data under the Carrier-to-Carrier Performance Plan required by the SBC/Ameritech Merger Conditions. (reporting period 10/8/99 through 12/31/99 for TX, OK, KS, MO, AK, CA, and NV).

SBC's dismal record of compliance with the merger conditions compounded by its recent statements that SBC and the Commission had "no meeting of the minds" demonstrates a systemic failure by SBC to satisfy commitments made to the Commission of the type that may indeed warrant divestiture, as contemplated in the SBC/Ameritech Merger Order.

¹ *Applications of Ameritech Corp., Transferor, and SBC Communications, Inc., Transferree, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Section 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules, Memorandum Opinion and Order*, 14 FCC Rcd 14712, 14858 (1999) ("SBC/Ameritech Merger Order") (stating that "should the merged entity systematically fail to meet its obligations, we can and will revoke relevant licenses, or require the divestiture of SBC/Ameritech into the current SBC and Ameritech companies).

² *See, e.g., In the Matter of SBC Communications, Inc.*, File Nos. EB-01-IH-0339, EB-01-IH-0453, NAL/Acct. No.200132080059, FRN Nos. 0004-3051-24, 0004-3335-71, 0005-1937-01, Order (rel. May 28, 2002) (requiring SBC to make a \$3.6 million payment to the United States Treasury for providing inaccurate information to the FCC in affidavits supporting two separate section 271 applications to provide long distance service in Missouri, Oklahoma, and Kansas).

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Indeed, SBC's argument that there was no "meeting of the minds" regarding the shared transport merger condition is essentially an admission that its current policy conflicts with the Commission's intent in drafting the condition. As the SBC/Ameritech Merger Order makes clear, if SBC/Ameritech *did not* agree to those conditions, including shared transport, the Commission would have rejected the merger as inconsistent with the public interest. The fact that less than three years later SBC now admits that it has failed to implement the Commission's shared transport condition warrants immediate and firm invocation of the full powers of the Commission's enforcement authority.

This backdrop of systemic, on-going noncompliance colors – but should not complicate – resolution of Z-Tel's and CoreComm's complaint under section 208. SBC's violations of the Merger Condition and a myriad of FCC rules is readily apparent. Grasping at any potential straw, SBC has now trotted out two strained arguments to avoid liability. In its *June 20 Letter*, SBC wrongly asserts that the D.C. Circuit's decision in *United States Telephone Ass'n v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA*") somehow absolves SBC of its existing unbundling obligations. In its *June 26 Letter*, SBC wrongly asserts that *Trinko v. Bell Atlantic Corp.*, 01-7746, 2002 U.S. App. LEXIS 12233 (2d Cir. June 30, 2002) stands for the proposition that a carrier waives all of its rights under the Act and the Commission's implementing rules the moment it executes an interconnection agreement. As demonstrated below, neither SBC assertion is correct. Rather, SBC is merely attempting to bootstrap *USTA* and *Trinko* as a means of recycling the unsupported and unsupportable arguments that SBC has proffered throughout this proceeding.

II. The *USTA* Decision Has No Impact On Either The Complaint Proceeding Or The NAL

Contrary to SBC's basic claim, *June 20 Letter* at 1, the *USTA* remand has absolutely nothing to do with SBC's existing obligations under the Act and the Commission's implementing rules. As SBC admits, *id.*, the *USTA* remand is just that – a remand. It is black letter administrative law that remanded agency rules remain in effect on remand, and modifications made to rules on remand apply prospectively.³ In addition, under the Federal Rules of Appellate Procedure, the FCC's filing of a Motion for Rehearing *en banc* automatically stays the issuance of the *USTA* mandate. Thus, the existing Commission rules and orders are in effect and remain in effect for purposes of this proceeding.

³ See, e.g., *National Lime Ass'n v. EPA*, 233 F.3d 625, 635 (D.C. Cir. 2000) (regulations that are remanded but not vacated are "left... in place during remand"); *Sierra Club v. EPA*, 167 F.3d 658, 664 (D.C. Cir. 1999) (same).

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Effectively, SBC's *June 20 Letter* is nothing but SBC's most recent attempt to have the Enforcement Bureau promulgate a presently nonexistent use restriction on the shared transport UNE. That request is beyond the authority of the Enforcement Bureau, and any such *sua sponte* rule change would violate the Administrative Procedure Act. In its initial brief, the Complainants demonstrated unquestionably that the Act, the Commission's rules, and the Commission's orders require SBC to permit competitors to use the shared transport UNE to provide intraLATA toll service.⁴ Indeed, Complaints demonstrated that:

- the plain language of section 251(c)(3) of the Act mandates UNE access for all telecommunications services, including intraLATA toll services⁵;
- Section 51.309(a) of the Commission's rules, 47 C.F.R. § 51.309(a), prohibits ILECs from placing use restrictions on UNEs⁶;
- Section 51.309(b) of the Commission's rules, 47 C.F.R. § 51.309(b), expressly allows competitors to use UNEs to provide interexchange services, such as intraLATA toll services⁷;
- Section 51.313(b) of the Commission's rules, 47 C.F.R. § 51.313(b) requires ILECs to allow competitors access to UNEs on terms and conditions no less than those the ILEC provides to itself, which includes intraLATA toll over shared transport⁸; and
- At least five Commission orders demonstrate that ILECs may not preclude competitors from using the shared transport UNE to provide intraLATA toll service.⁹

SBC makes no effort in its brief or in its *June 20 Letter* to address in any substantive way this mountain of precedent. Indeed, SBC's brief includes absolutely no discussion of the Commission rules.

⁴ See generally, Initial Brief of Complainants (Jan. 29, 2002).

⁵ *Id.*, 2.

⁶ *Id.*, 5.

⁷ *Id.*

⁸ *Id.*, 6.

⁹ *Id.*, 6-14.

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At bottom, SBC's *June 20 Letter* is merely SBC's latest attempt to say what it believes the Commission's rules should be. But that is the task of rulemaking proceedings, not complaint proceedings. As the Commission has recognized, "policy arguments that, whatever their merits, are inconsistent with the actual language of the rule in effect at that time" are simply irrelevant in complaint proceedings.¹⁰ SBC's *June 20 Letter* is similarly irrelevant. For the Commission to do as SBC requests, not only would it let an admitted rule-breaker off the hook, the Commission would have to re-write its current shared transport rule, in clear violation of the Administrative Procedure Act in order to do so.

II. The *Trinko* Decision Has No Impact On Either The Complaint Proceeding Or The NAL

SBC asserts that the *Trinko* decision supports its position that competitors waive all of their rights under the Act and the Commission's rules the moment they execute an interconnection agreement.¹¹ *Trinko* contains no such holding. Rather, *Trinko* – at best – found that "[t]he particular interconnection agreement entered into by the defendant and AT&T requires the parties to resolve any disputes through procedures set forth in the agreement."¹² That decision was based upon a specific interpretation by the Second Circuit of a specific interconnection agreement – the AT&T and Bell Atlantic interconnection agreement in New York. In making its argument – in its June 26 letter and throughout its papers in the complaint proceeding – SBC has never once cited or referenced any provision of any interconnection agreements with the Complainants that supports SBC's contention that Complainants have waived their rights under the Act and the Commission's rules.

Although SBC claims that Complainants have waived – apparently implicitly – all remedial rights under the statute and the Commission's rules upon signing an interconnection agreement with SBC,¹³ SBC has offered no evidence of any such waiver by the Complainants. Even after filing excerpt after excerpt from various interconnection agreements allegedly supporting its view, SBC never once has cited to any provision in any Z-Tel or CoreComm agreement that even remotely suggests that either party waived remedial statutory rights and/or rights under Commission rules and orders by entering into such agreements.

¹⁰ *Net2000 Communications, Inc. v. Verizon-Washington, D.C. et al.*, Memorandum Opinion and Order, File No. EB-00-018, ¶ 30 (rel. Jan. 9, 2002).

¹¹ *June 26 Letter*, 1.

¹² *Trinko*, *27.

¹³ SBC Reply Brief, 2-4.

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The reason for this gaping hole in SBC's argument is simple: the clear text of the Z-Tel and CoreComm agreements make clear that in executing these agreements, Z-Tel and CoreComm did not waive their respective rights to seek relief under the statute or under the FCC's rules and orders. Indeed, these agreements contain express and explicit clauses that expressly preserve each parties remedial rights.¹⁴ Complainants note, however, that it is not their burden to demonstrate that they have not waived their statutory rights. That task is left to SBC as part of its affirmative defense. As noted, SBC has never once pointed to any provision of any interconnection agreement that even remotely suggests that Complainants waived any right under the Act, the Commission's rules, or otherwise. The explanation for this failure is simple: Complainants have done nothing to waive their rights under the Act, the Commission's rules, or otherwise.

The FCC is clearly an appropriate forum to enforce its own rules. Undisturbed Commission precedent demonstrates that the Commission can, and has, adjudicated formal complaints on matters arising from Section 251 of the Act and associated implementing rules. In the *Local Competition Order*, the Commission announced that it would adjudicate claims arising under Section 251 of the Act and associated rules through its Section 208 enforcement authority:

An aggrieved party [e.g., Complainants] could file a Section 208 complaint with the Commission alleging that the incumbent LEC or requesting carrier has failed to comply with the requirements of Sections 251 and 252, including Commission implementing rules thereunder, even if the carrier is in compliance with an agreement approved by the state commission.¹⁵

Although initially vacated by the Eighth Circuit, the Supreme Court reinstated the Commission's authority to adjudicate claims arising under Section 251 of the Act,¹⁶ and that authority and this Commission ruling continue to exist to this day. Not even SBC has the nerve to contest this plain fact. Moreover, the Commission has adjudicated a number of Section 251-related formal complaints pursuant to the rule outlined above, including the following:

¹⁴ As an example, an excerpt of the Interconnection Agreement between Z-Tel Communications, Inc. and Ameritech Illinois is attached hereto at Tab 1. Section XXVI.6 clearly states that "no remedy set for this agreement is intended to be exclusive and each and every remedy shall be cumulative and in addition to any other rights or remedies now or hereafter existing under applicable or otherwise."

¹⁵ *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, CC Docket No. 96-98, 11 FCC Rcd 15499, ¶ 127 (1996) (subsequent history omitted) ("*Local Competition Order*").

¹⁶ *AT&T v. Iowa Utils. Bd.*, 525 U.S. 366, 389 (1999).

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- *Net2000 Communications, Inc. v. Verizon-Washington, D.C. et al.*,¹⁷
- *TSR Wireless v. U S WEST*,¹⁸ and
- *Cellexis International, Inc. v. Bell Atlantic NYNEX Mobile Systems, et al.*¹⁹

SBC conveniently refuses to admit the existence of the Commission's existing rule and spot-on cases in its brief. Again, SBC demonstrates that it has no "meeting of the minds" with the Commission.

¹⁷ *Net2000 Communications, Inc. v. Verizon-Washington D.C. et al.*, Memorandum Opinion and Order, File No. EB-00-018 (rel. Jan. 9, 2002). In this case, the Commission addressed the merits of Net2000's claims that Verizon's special access-to-EEL conversion process violated Sections 201(b) and 251(c) of the Act and relevant Commission local competition orders. If the Commission lacked jurisdictional authority to address Section 251 claims (which it does not) and if the violation of Section 251 could not amount to a Section 201(b) violation (which similarly is incorrect), then the Commission presumably would have dismissed Net2000's claims for lack of jurisdiction. The Commission did not do so, however. Rather, the Commission addressed the merits of each of Net2000's claims.

¹⁸ *TSR Wireless, LLC v. U S WEST Communications, Inc.*, 15 FCC Rcd 11166, petition for review denied sub nom. *Qwest Corporation v. FCC*, 252 F.3d 462 (D.C. Cir. 2001). In this case, the Commission noted:

As an initial matter, we reject Defendants' arguments that the Commission lacks jurisdiction to resolve the issues raised in these formal complaints. Section 208 permits 'any person ... complaining of anything done or omitted to be done by any common carrier subject to this Act, in contravention of the provisions thereof' to file a complaint with the Commission. Defendants are common carriers. Complainants allege that Defendants have imposed certain charges on them in violation of Sections 201, and 251-252 of the Act and the Commission's rules implementing those Sections. The Commission stated in the *Local Competition Order* that 'an aggrieved party could file a Section 208 complaint with the Commission, alleging that the incumbent LEC or requesting carrier has failed to comply with the requirements of Section 251 and 252, including Commission rules thereunder....' Therefore, our authority to decide these complaints arises from Sections 201, 208, 251 and 252 of the Act.

Id., 13 (emphasis added) (citations omitted).

¹⁹ *Cellexis International, Inc. v. Bell Atlantic NYNEX Mobile Systems, et al.*, Memorandum Opinion and Order, File Nos. WB/ENF-F-97-001, WB/ENF-F-97-002, WB/ENF-F-97-003 (rel. Dec. 19, 2001). Here, the Commission confirmed that a carrier's practices may violate Sections 201(b), 202(a), and 251 of the Act. *Id.*, ¶¶ 8-10. The Commission again confirmed that "statutory ... obligations, whatever they may be, exist independent of the [interconnection] Agreement's terms." *Id.*, ¶ 9. Moreover, the Commission confirmed that a carrier does not waive its statutory rights merely by signing an interconnection agreement. *Id.*

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Trinko does nothing to disrupt the existing Commission complaint rule or related rulings. Indeed, as noted, the *Trinko* court was extremely carefully to constrain itself to the interconnection agreement between AT&T and Bell Atlantic in New York. The *dicta* upon which SBC relies merely contains the *Trinko* court's view that it would be possible for a CLEC to waive voluntarily remedies in an interconnection agreement, based upon the particular language of that agreement.

Congress chose to give the parties the *option* to negotiate particular agreements with the aid and ultimate approval of state regulatory bodies, which have specialized expertise in the area of telecommunications. This *option* offers telecommunications carriers the *choice* to use a regulatory process that *might* be more efficient than other alternatives.²⁰

* * *

An ILEC *can* meet its obligations under subsections (b) and (c) by entering into an interconnection agreement with a requesting carrier through the procedures outlined in section 252. Such interconnection agreements *do not necessarily* reiterate the duties enumerated in section 251. Instead, the ILEC and requesting carrier have the *option* of contracting around the obligations or section 251.²¹

Z-Tel and CoreComm did not exercise any such "option" in the interconnection agreements at issue in this case, and more importantly, SBC has never asserted that Z-Tel and CoreComm exercised any such option. Rather, SBC's argument is that the mere existence of the agreement constitutes an automatic waiver of remedies available under the Act and the Commission's rules. *Trinko* says no such thing. At best, the *Trinko dicta* stands for the unremarkable proposition that parties have the "option" of waiving rights in executing an interconnection agreement.²² Nowhere does *Trinko* remotely state that parties automatically waive all of their statutory rights merely by entering an interconnection agreement.

It is worth mentioning that under SBC's reading of *Trinko*, not only would the Commission lack authority to enforce its rules, but the Commission would similarly lack

²⁰ *Trinko*, *35 (emphasis added).

²¹ *Id.*, *31 (emphasis added).

²² *Id.*

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authority to enforce the SBC/Ameritech merger conditions.²³ Apparently, merely by uttering the word "*Trinko*," SBC can escape any enforcement of any Commission regulation merely through the existence of an interconnection agreement, regardless of whether parties sought to preserve – rather than waive – their rights. Once again SBC proves too much.

Finally, Complainants do note the occurrence of several ironies in SBC's reliance upon *Trinko*. The *Trinko* court re-established the availability of private antitrust remedies for unlawful behavior by Verizon and other incumbent LECs. In doing so, the *Trinko* court rejected the viewpoint of the Seventh Circuit Court of Appeals in *Goldwasser v. Ameritech*, which held that FCC authority over local interconnection policy superceded application of antitrust law to incumbent LECs like SBC. Since *Goldwasser* was issued, SBC has relied upon it in motions to dismiss private antitrust litigation brought by CoreComm, Covad, and another CLEC called CalTech International Telecom Corporation. In those motions to dismiss, SBC urged the federal courts to dismiss antitrust claims on the basis that the proper method of resolving local competition disputes lies with the FCC and state commissions, through the section 251 and 252 process. But now that SBC is faced with FCC enforcement, it conveniently ignores the position it consistently takes before federal courts.

It should not surprise the Commission that SBC would present different interpretations of the Commission's enforcement authority before federal antitrust courts than the FCC. SBC would prefer that it not answer to *any* legal authority – antitrust or regulatory – and it will do anything or say anything to achieve that result. These are the actions of a lawless company, and the Commission should exercise its full enforcement authority over SBC's actions.

²³ June 26 Letter, n. 3 ("While the court in *Trinko* was referring to an ILEC's obligation under section 251, its analysis and reasoning apply equally to the Commission's rules and orders (including the SBC/Ameritech merger conditions).").

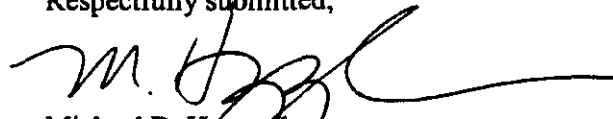
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III. Conclusion

As demonstrated above, neither *USTA* nor *Trinko* have any bearing on the Commission's decision in the above-referenced proceedings. To the contrary, SBC's reliance on these demonstrate that its arguments are thus far meritless. Accordingly, the Commission should act as soon as possible to grant Complainants' complaint and issue a Forfeiture Order to resolve the NAL.

Respectfully submitted,



Michael B. Hazzard
COUNSEL TO COMPLAINANTS

cc: Chairman Powell*
Commissioner Abernathy*
Commissioner Martin*
Commissioner Copps*
Kyle Dixon*
Matthew Brill*
Daniel Gonzales*
Jordan Goldstein*
Maureen Del Duca*
David H. Solomon*
Marlene H. Dortch**
Christopher Heimann***

* By US Mail
** By Hand Delivery
*** By Email and US Mail

TAB A

INTERCONNECTION AGREEMENT UNDER SECTIONS 251 AND 252 OF THE
TELECOMMUNICATIONS ACT OF 1996

Dated as of May 12, 2000

by and between

AMERITECH ILLINOIS

and

Z-TEL COMMUNICATIONS, INC.

take over such defense; provided that in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify the relevant Indemnified Party against, any cost or liability in excess of such refused compromise or settlement. With respect to any defense accepted by the Indemnifying Party, the relevant Indemnified Party shall be entitled to participate with the Indemnifying Party in such defense if the Claim requests equitable relief or other relief that could affect the rights of the Indemnified Party and also shall be entitled to employ separate counsel for such defense at such Indemnified Party's expense. If the Indemnifying Party does not accept the defense of any indemnified Claim as provided above, the relevant Indemnified Party shall have the right to employ counsel for such defense at the expense of the Indemnifying Party. Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any such Claim and the relevant records of each Party shall be available to the other Party with respect to any such defense, subject to the restrictions and limitations set forth in Article XX.

ARTICLE XXVI LIMITATION OF LIABILITY

XXVI.1 Limited Responsibility. Each Party shall be responsible only for service(s) and facility(ies) which are provided by that Party, its authorized agents, subcontractors, or others retained by such parties, and neither Party shall bear any responsibility for the services and facilities provided by the other Party, its Affiliates, agents, subcontractors, or other persons retained by such parties. No Party shall be liable for any act or omission of another Telecommunications Carrier (other than an Affiliate) providing a portion of a service.

XXVI.2 Apportionment of Fault. In the case of any Loss arising from the negligence or willful misconduct of both Parties, each Party shall bear, and its obligation shall be limited to, that portion of the resulting expense caused by its negligence or misconduct or the negligence or misconduct of such Party's Affiliates, agents, contractors or other persons acting in concert with it.

XXVI.3 Limitation of Damages. Except for indemnity obligations under Article XXV, Ameritech's liability to CLEC for any Loss resulting from any and all causes shall be as follows:

- a) Except for Ameritech's willful misconduct, with respect to any Claim for any Loss associated with the installation, provision, termination, maintenance, repair, or restoration of an individual Network Element or Combination provided for a specific CLEC Customer, Ameritech's liability shall be limited to the greater of: (i) the total amount that is or would have been charged to CLEC for the service or function not performed or improperly performed and (ii) the amount Ameritech would have been liable to its Customer if the Resale Service was provided directly to its Customer; and
- b) For all other Claims, including any Claims resulting from the failure of Ameritech to meet its parity obligations under this Agreement, CLEC shall be entitled to recover its proven damages, subject to the limitations of Section 26.5.

XXVI.4 Limitations in Tariffs. Each Party shall, to the maximum extent permitted by Applicable Law, provide in its tariffs and contracts with its Customers that relate to any Telecommunications Service or Network Element provided or contemplated under this Agreement, that in no case shall such Party or any of its agents, contractors or other persons retained by such parties be liable to any Customer for any Consequential Damages (as defined in Section 26.5 below).

If a Party breaches its obligations under this Section 26.4, the breaching Party shall be liable to the nonbreaching Party for any and all Losses resulting from such breach, including the indemnification of and/or reimbursement for Losses arising from Claims by and from such breaching Party's Customers, to the extent such Losses would have been limited had the tariff or contract provisions referenced above in this Section been included.

XXVI.5 Consequential Damages. In no event shall either Party have any liability whatsoever to the other Party for any indirect, special, consequential, incidental or punitive damages, including loss of anticipated profits or revenue or other economic loss in connection with or arising from anything said, omitted or done hereunder (collectively, **Consequential Damages**), even if the other Party has been advised of the possibility of such damages; provided that the foregoing shall not limit (i) a Party's obligation under Section 25.1 to indemnify, defend and hold the other Party harmless against any amounts payable to a third person, including any losses, costs, fines, penalties, criminal or civil judgments or settlements, expenses (including attorneys' fees) and Consequential Damages of such third person or (ii) a Party's liability to the other for willful or intentional misconduct.

XXVI.6 Remedies. Except as expressly provided herein, no remedy set forth in this Agreement is intended to be exclusive and each and every remedy shall be cumulative and in addition to any other rights or remedies now or hereafter existing under applicable law or otherwise.

ARTICLE XXVII BILLING

XXVII.1 Billing.

XXVII.1.1 Each Party will bill all applicable charges, at the rates set forth herein, in the Pricing Schedule and as set forth in applicable tariffs or contracts referenced herein, for the services provided by that Party to the other Party in accordance with this Article XXVII and the Implementation Plan.

XXVII.1.2 The Parties agree that in order to ensure the proper performance and integrity of the entire billing process, each Party will be responsible and accountable for transmitting to the other Party an accurate and current bill. Each Party agrees to implement control mechanisms and procedures to render a bill that accurately reflects the services ordered and used by the other Party.

INTERIM REPORT

Introduction

KPMG Consulting was directed by Illinois Commerce Commission (ICC) staff to provide a brief interim status report about the third-party independent review of SBC Ameritech Illinois' OSS. KPMG Consulting understands that the Commission will use the information in this report to determine whether the OSS evaluation should continue as planned. ICC staff directed KPMG Consulting to provide this report so that it could be released to the public prior to a special open meeting of the Illinois Commerce Commission on Thursday, June 20, 2002.

This interim status report answers three questions:

- What was KPMG Consulting asked to do and what has been accomplished?
- What remains to be done?
- How should the test proceed?

Question Number 1: What was KPMG Consulting Asked to Do and What Has Been Accomplished?

In May 2000, the Commission hired KPMG Consulting to perform several functions, including a "New York style" test of SBC Ameritech's Operational Support Systems (OSS). Here is a summary of what the Commission has required KPMG Consulting to do:

- Develop a Master Test Plan
- Build the electronic interfaces necessary for conducting the test
- Conduct a preliminary assessment of SBC Ameritech's performance measures
- Build a "test CLEC" in order to "live the CLEC experience" during testing
- Design and implement a process to manage the "test-until-pass" assessment
- Design a highly open testing process so that extensive information would be provided during the test to the ICC and to industry
- Execute the tests described in the Master Test Plan under the close supervision of ICC staff

Over the last 2 years KPMG Consulting has devoted over 100,000 person-hours to accomplish the ICC's objectives. Here is a summary of what KPMG Consulting has accomplished to date:

- KPMG Consulting worked with ICC staff, SBC Ameritech, and CLECs to design a Master Test Plan covering all key facets of SBC Ameritech's OSS, including:
 - Pre-ordering and ordering
 - Provisioning
 - Billing
 - Maintenance & repair
 - Interface support
 - Account management
 - CLEC training
- KPMG Consulting, working with Hewlett Packard, designed and implemented systems to test SBC Ameritech's electronic interfaces:
 - EDI and GUI (pre-order/order)
 - CORBA (pre-order)
 - EDI 811 (billing)
 - EBTA (maintenance & repair)

- KPMG Consulting conducted a study published in June 2001 on a sample of SBC Ameritech Illinois performance measures. This report raised questions about SBC Ameritech's data integrity and measurement reporting.
- KPMG Consulting executed the tests in the Illinois Master Test Plan by:
 - Conducting hundreds of interviews with SBC Ameritech employees
 - Reviewing more than 1,000 SBC Ameritech documents
 - Monitoring and assessing hundreds of provisioning and repair events
 - Submitting tens of thousands of electronic transactions
- KPMG Consulting and Hewlett Packard "lived the CLEC experience" by:
 - Making hundreds of contacts with SBC Ameritech account managers and help desks
 - Submitting thousands of pre-order inquiries and customer orders
 - Receiving hundreds of electronic and paper bills
 - Processing hundreds of trouble tickets
- KPMG Consulting's program management and communications have been timely and extremely detailed. KPMG Consulting has been:
 - Conducting daily meetings with Commission staff and SBC Ameritech about project issues and progress
 - Providing weekly briefings about important schedule jeopardies and test obstacles
 - Providing detailed monthly status reports
 - Making thousands of test documents (e.g., interview notes, data requests, etc.) accessible to ICC staff online through a secure website
- KPMG Consulting has updated the ICC project plan 12 times during the test. These project plan changes have been driven by testing requirements in the Master Test Plan and the test-until-pass approach. All project plan updates have been jointly reviewed each month by KPMG Consulting, SBC Ameritech, and ICC staff. Project plan updates have included:
 - Activity descriptions and schedules for over 1,000 activities
 - Line-by-line updates explaining changes to every scheduled activity each month
- KPMG Consulting has provided extensive information to interested parties by:
 - Conducting weekly meetings with CLECs monitoring the Illinois test
 - Maintaining a website (www.osstesting.com) with extensive information for the general public

KPMG Consulting continues to work under the close supervision of ICC staff to complete the remaining test activities.

Question Number 2: What Remains to Be Done?

If no significant defects had been discovered in SBC Ameritech's systems, processes, and documentation, it is estimated that the Illinois test could have been completed in March 2002. However, as of today, 413 specific defect reports have been provided to the ICC and SBC Ameritech. SBC Ameritech has acknowledged many of these defects and taken corrective action. Consistent with the Master Test Plan, KPMG Consulting has been performing retesting in areas where SBC Ameritech has taken corrective action.

Some of the most important remaining problems with SBC Ameritech OSS systems and processes that continue to be investigated are:

- SBC Ameritech does not accurately update Customer Service records.
- SBC Ameritech systems did not provide timely or accurate responses during pre-order/order volume testing.
- SBC Ameritech has not provided proper Line Loss Notifications.

- SBC Ameritech has made incorrect directory assistance updates.
- SBC Ameritech's end-to-end maintenance & repair process does not ensure trouble reports are handled consistently, accurately and completely.
- Orders have not flowed through SBC Ameritech EDI systems as expected.
- SBC Ameritech EDI systems have not provided service order completions on confirmed due dates.

In addition to the significant issues listed above, KPMG Consulting has noted numerous unresolved issues in SBC Ameritech's performance metrics systems and processes:

- SBC Ameritech's data retention policies regarding source data do not enable thorough and complete audits.
- The procedures and controls SBC Ameritech has in place for performance measurement calculation and reporting are inadequate.
- SBC Ameritech restated performance measurement results without notifying CLECs and regulators in a consistent manner.
- SBC Ameritech does not provide accurate notices of performance measure restatements on its Website News Page.

Until these and other issues are addressed, the Global Exit Criteria in the current Illinois Master Test Plan as designed will not be satisfied, and the test will not be considered complete:

Question Number 3: How Should the Test Proceed?

As stated above, KPMG Consulting understands that the Commission will use the information in this report to determine whether the OSS evaluation should continue as planned. We understand that the Commission may decide to change the test, end the test immediately, or proceed under the existing plans.

Since KPMG Consulting is required to act as a third-party evaluator independent of SBC Ameritech or any other Illinois-regulated telecommunications carrier, we believe it would be inappropriate to advocate in favor of or disfavor of proposals to change the test. However, at this point in the test, KPMG Consulting notes that there are only two ways to significantly change the schedule and resources required for testing:

1. **Change the test-until-pass requirement.** If the Commission intends for SBC Ameritech to cooperate with the test until all important defects are resolved, then the test-until-pass requirement should not be changed. However, if the ICC is willing to have the test completed with certain defects left unresolved, the ICC should modify the test-until-pass requirement. This could reduce the testing effort and streamline the schedule. However, by reducing or eliminating the test-until-pass requirement, ICC would need to deal with how negative or inconclusive results from the test would be addressed, especially if the test results were to be used in a Section 271 proceeding.
2. **Change the scope of the test.** If the Commission wanted to reduce the scope of the test, it could simply eliminate or reduce the testing requirements. For scope changes to have any significant impact, they would need to be focused in areas where significant testing work remains, such as in the performance metrics area. These scope changes would be noted by updating the Master Test Plan, consistent with the scope change procedures documented in the Plan. This process has been available throughout the test, and has been used to make several changes to the Illinois test already.

KPMG Consulting is prepared to work with the Commission to wrap up testing activities and provide a final report if so directed. If the Commission decides to continue with the test as planned, KPMG Consulting will continue to work under the close supervision of ICC staff to perform the test as specified.